



### 37 CFR 1.132 AFFIDAVIT TRAVERSING REJECTIONS

State of Georgia  
County of Cobb

BEFORE ME, the undersigned Notary,

*Samuel Ashby*, on this 17 day of June, 2005, personally appeared Paul F. Manley Jr., known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I, Paul F. Manley Jr., owner of CCBerries LLC, a retail and internet based Chocolate Covered Strawberry business, have worked in the field or been involved in the making of chocolate covered strawberries for over 7 years. During such time, I have worked with the coating of fruit with coatings such as chocolate and further, have researched and developed a method of applying artwork for the placement on strawberries and other irregular shaped fruit surfaces. Therefore as one who is at least of ordinary skill in the art, I attest to the following:

Having reviewed the cited reference of Waters, U.S. Patent No. 6,376,000, a notable difference between the present invention and the method cited in Waters, is that Waters deals with molds while the present invention deals with enrobed fruit. These are two different types of confections.

The methods used for each would not work on the other. A mold has a constant shape and Walters deals with molds with planar surfaces (flat). Enrobed fruit, also know as dipped or chocolate covered, will vary in size and shape in every dimension, molds cannot be used when enrobing fruit because of the inconsistent shape.

Using a strawberry as an example, for reference we will call the top of the fruit with the leaves and stem the north pole, and the equator the point between the North and South pole, the shape of a bisected strawberry at the equator can be round, oval, or even concave. The strawberry can also be asymmetrical, when bisected along the North/South lines the two pieces (East/West) are not always the same size. The shape will vary depending on type being grown and the grower's preference of what size and shape to be selected for that shipment/flat. Long-stem berries are picked first and are larger than what would normally be found in a supermarket, some but not all growers try to make each shipment/flat consistent in size and shape for marketing purposes.

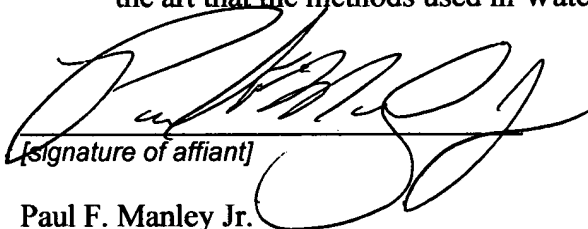
Not all varieties of strawberries are available year round; the method used must be flexible enough to handle changes in size and shape throughout the year. Attempting to develop molds for each possible size and shape

would be cost prohibitive. Producing a mold that was larger than any possible strawberry would result in a chocolate coating that was too thick to bite through without spoiling the effect of the mix of chocolate and fresh fruit (aesthetically unpleasing).

	Waters	Present Invention
Shape	Uses Mold, consistent flat surface for image	<b>No mold</b> , the image is applied to a surface that's shape will vary from piece to piece.
Chocolate	Poured: the chocolate assumes the shape of the mold that it is poured into	Enrobed (dipped) so that the chocolate assumes the shape of the fruit and clings to it's surface
Application of image	Chocolate poured onto flat image that is held in place by the mold	Image shaped to fit the piece to which it is applied, wrapped around the complex curve of the fruit surface also using the chocolate itself as a leveling compound to smooth out the smaller deviations in curvature.
End creation	A chocolate bar with each bar being exactly the same shape as the last one	Chocolate covered fruit that will vary in shape from piece to piece.

Applying the image after the chocolate is solid does not work because the chocolate is used not just as a platform for the image but rather as a leveling compound to help smooth out the smaller bumps and curves in the fruit surface.

It is obvious to anyone familiar with confections and of ordinary skill in the art that the methods used in Waters would not work on enrobed fruit.

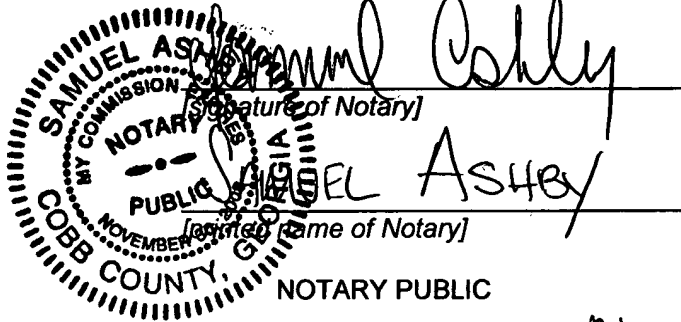


[signature of affiant]

Paul F. Manley Jr.  
1800 E. Piedmont Rd.  
Marietta GA 30062  
770-509-0280

Subscribed and sworn to before me, this 17 day of June, 2005.

[Notary Seal:]



NOTARY PUBLIC

My commission expires: Nov 18, 2008.